

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

74-2348

B
P/S

To be argued by: J. Byron O'Connell, Esquire
Attorney at Law
Plattsburgh, New York
Time Requested: 15 minutes

UNITED STATES COURT OF APPEALS

Second Circuit

RICHARD PERRY,

Plaintiff,

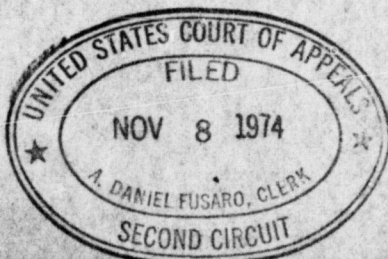
-against-

ROLAND H. ST. PIERRE, Mayor of the City
of Plattsburgh, New York, ROBERT BURKE,
Alderman, Ward I, City of Plattsburgh,
New York; GARY DAME, Alderman, Ward I,
City of Plattsburgh, New York; CARL RENNELL,
Alderman, Ward II, City of Plattsburgh, New
York; MICHAEL HALEY, Alderman, Ward II, City
of Plattsburgh, New York; ROBERT GRIFFIN,
Alderman, Ward III, City of Plattsburgh, New
York; GEORGE POITRAS, Alderman, Ward III,
City of Plattsburgh, New York, aforesaid
Aldermen being all of the members of the
Common Council of the City of Plattsburgh,
New York,

Defendants.

APPELLANT'S BRIEF AND APPENDIX

J. BYRON O'CONNELL, ESQUIRE
Attorney for Plaintiff-Appellant
66 Margaret Street
Plattsburgh, New York 12901



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

| <u>BRIEF</u> | <u>Page</u> |
|---------------------|-------------|
| Statement of Issues | 1 - 2 |
| Statement of Facts | 3 |
| Argument | |
| Point I | 4 |
| Point II | 5 - 9 |
| Point III | 10 - 11 |
| Point IV | 12 - 13 |
| Conclusion | 14 |

APPENDIX

| | |
|---|-----------|
| Order to Show Cause | A1 - A3 |
| Affidavit of Richard Perry | A4 - A7 |
| Attorney's Affidavit (Louis E. Wolfe, Esquire) | A8 - A9 |
| Verified Complaint | A10 - A13 |
| Verified Answer | A14 - A15 |
| Affidavit of Roland H. St. Pierre | A16 - A19 |
| Decision of Hon. James T. Foley | A20 - A25 |
| Notice of Appeal | A26 |
| Order Granting Stay | A27 |
| Order Docketing Out of Time | A28 |
| First Letter from Mayor of Plattsburgh | A29 |
| Second Letter from Mayor of Plattsburgh | A30 |
| Plattsburgh Statute in Question and New York Election Law Statute Declared Unconstitutional | A31 |

STATEMENT OF ISSUES

It issue in this appeal is the constitutionality of Section 88 of the Charter of the City of Plattsburgh, the instrument by which this City is governed.

In September of 1973, the Mayor of the City of Plattsburgh, Reverend Roland St. Pierre wrote a letter to the appellant who was then a candidate for the County Board of Legislators stating that it was the opinion of Plattsburgh's corporation counsel that the appellant's candidacy "may constitute a violation of Section 88 of the Charter which could result in the forfeiture of your employment as a member of the Plattsburgh Police Department." (See full letter in appendix.)

The appellant was subsequently elected to the County Board of Legislators in November, 1973, took office in January of 1974 and was fired by the Mayor of Plattsburgh in March of 1974, Section 88 being invoked as the grounds for such action.

The appellant contends that Section 88:

- (1) Does not specifically prohibit running for office or holding office;
- (2) That the statute is vague and over broad and thus unconstitutional;

(3) That the statute violates his first amendment and equal protection rights.

Central to the resolution of all the above issues, it is contended, is the fact that the appellant, from before the time he was even asked to run for office, continuously and at all times since has been totally disabled as a result of a work-related injury. He has not worked one day since January 26, 1973, while receiving his full salary under Section 207-C of New York's General Municipal Law. The City of Plattsburgh is reimbursed a large percentage of the salary it pays the appellant from New York's Workmen's Compensation Fund.

STATEMENT OF FACTS

The appellant, Richard Perry, is a resident of Plattsburgh and is a member of its police force, having served over 19 years on the force. Mr. Perry will have accumulated the requisite 20 years needed for retirement purposes in July, 1975.

Mr. Perry was injured on a work-related accident while on an emergency ambulance trip and has been disabled from performance of his duties as a police officer by reason of this on the job injury since January 26, 1973. Two doctors have certified that he is totally disabled. Although not working, Mr. Perry is receiving his full salary under Section 207 (c) of the General Municipal Law appended hereto.

Unable to work as a policeman and thus having extra time to devote to other projects, Mr. Perry ran for a position on the County Board of Legislators and was elected in the Fall of 1973. After receiving a letter from the Mayor of Plattsburgh stating that his candidacy violated Section 88 of Plattsburgh's City Charter, Mr. Perry filed suit in the Federal Court Northern District of New York alleging jurisdiction under 42 U.S.C. 1983, seeking an injunction against any action the City of Plattsburgh might take because of his political activities. Such request was denied.

I.

THE STATUTE IN QUESTION DOES NOT
SPECIFICALLY PROHIBIT THE ACTS OF THE APPELLANT

Mr. Perry first contends that Section 88 of the Plattsburgh City Charter, the statute which has been cited by the Mayor of the City of Plattsburgh as a basis for the firing of Mr. Perry (see letter and appendix) simply does not specifically forbid running for office or holding office. Section 88 reads as follows:

It is unlawful for any police officer to solicit any person to vote at any political caucus, primary or election for any candidates, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary, or and* any election or to be a member of any political committee; and any person violating the provisions of this section shall forfeit his position under the city government.

*So in original

II.

THE STATUTE IN QUESTION IS UNCONSTITUTIONALLY VAGUE AND OVER BROAD

Mr. Perry, in any event, contends that Section 88 of the Plattsburgh City Charter is unconstitutionally vague and over broad. There is no disagreement in the case law that statutes restricting political activities of public employees like those restricting any constitutional rights must be narrowly drawn: ". . . such regulations must be no broader than necessary and must not be ambiguous or vague." (28 A.L.R.3d 717; See also Lecci v. Cahn, 360 F.Supp. 759, 1973 and cases cited below).

A number of such statutes have been declared unconstitutional because of vagueness, one of the most recent being Section 426 (3) of New York's Election Law in Lecci v. Cahn, supra. See also Mancuso v. Taft, 341 F. Supp. 574, (1972) aff'd, 476 F.2d 187, 1973; Hobbs v. Thompson, 448 F.2d 456 5th Cir. 1971; Gray v. City of Toledo, 323 F. Supp. 128; Huerta v. Flood, 103 Ariz. 608, 447 P.2d 866, where other statutes regulating political activities were also declared unconstitutional because of vagueness.

Surely the language of Section 88 with such phrases as "any person" and "in any manner" is just as broad if not broader than the language of Section 426 (3) of the New York Election Law Statute referred to in Lecci, supra (see appendix). Lecci v. Cahn was written by Senior District

Judge Zavatt and it should be noted that while Lecci v. Cahn was vacated in Lecci v. Cahn, 493 F.2d 826, the reason for this was because the issue at the time of the District Court's decision had, in the opinion of the Federal Court of Appeals, become moot, a situation surely not present here and because it was also felt that a Federal District Court did not have jurisdiction to review a State Court's determination of a Federal Constitutional question; also a situation not present here. Said the Federal Court of Appeals in Lecci v. Cahn, "We do not reach the merits of this appeal. . ."

The Lecci v. Cahn decision of Judge Zavatt is still sound law and an excellent study of the question of regulating the rights of public employees and of the void for vagueness question. Judge Zavatt reiterated the above mentioned rule that such statutes concerning political regulations must be narrowly drawn: "Constitutional rights may be limited only where the restrictions are narrowly drawn, specific and directly related to a vital state interest." (Citing Keyishian v. Board of Regents 385 U.S. 589, 87 S. Ct. 675, 1967 and Wieman v. Upedegraff 344 U.S. 183, 73 S. Ct. 215, 1952. Judge Zavatt then compared the election law statute in issue to other provisions of local law which has already been found unconstitutionally broad and declared New York's Election Law Statute to be similarly so. It is urged that the Plattsburgh Statute now in issue be compared with New York's Election Law Statute (see appendix)

and with the other State law statutes which failed for vagueness and which are set out in the District Court decision in Lecci v. Cahn.

Reference to two Supreme Court decisions in the District Court's opinion in our case is not appropriate. United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 1973, dealt with the Federal Hatch Acts restrictions on political activities of federal workers. Broderick v. Oklahoma, 413 U.S., 601, 1973, concerned a State statute's efforts to regulate State workers political activities.

In United States Civil Service v. National Association of Letter Carriers, supra, the section of the Hatch Act in issue provided:

"An employee in an Executive agency or an individual employed by the government of the District of Columbia may not--

"(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

"(2) take an active part in political management or in political campaigns.

"For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President."

As can be seen from a simple reading of the statute itself, there was a basis for determining what the Federal

language of the statute meant. The Federal Civil Service Commission had provided a long and extensive list of prohibitive acts which served to clarify the general statutory language in the Hatch Act against taking "an active part in political management or in political campaigns." No such similar clarification has been provided concerning the statute at issue in our case.

In Broderick, supra, 5-4 decision, an Oklahoma Statute prohibiting certain political activities on the part of the State workers was found to be not vague or over broad as far as an attack by the particular appellants was concerned. The appellants, members of a State Commission had actively solicited money from their fellow employees at state offices on behalf of their superior who was running for re-election. This factual situation is, of course, completely different from Mr. Perry's, for it has never slightly been suggested that he engaged in any such type of conduct. Brockerick, supra, was also a reaffirmation of the constitutional rule previously mentioned concerning strict drafting of political regulation statutes: "It has long been recognized that the first amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment Rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society" (pg. 839). While much of the vigorous arguments in Broderick dealt with the question of whether a statute

could be declared over broad on its face while the actions of the person attacking the action could conceivably be prescribed if the statute were in fact narrowly drawn, the decision itself rested on the same grounds as did the decision in United States Civil Service v. National Association of Letter Carriers, supra. Said the majority, referring to the prohibitive acts in question: "These prescriptions are taken directly from the contested paragraphs of Section 818 the rules of the State Personnel Board and its interpretive circular and the authoritative opinions of the State Attorney General. Without question, the conduct the appellant has been charged with falls squarely within these prescriptions." Pg. 843.

We again point out with Broderick as we did with National Association of Letter Carriers that there has been no similar clarification of any kind concerning Plattsburgh's Statute. There has been no "authoritative opinions of the State Attorney General" - there has not even been any case law to our knowledge regarding the Plattsburgh Statute. Thus, these two cases relied upon the District Court's opinion, are just not applicable to our situation.

III.

THE STATUTE IN QUESTION VIOLATES THE PETITIONER'S FIRST AMENDMENT AND EQUAL PROTECTION RIGHTS

Reference is again made to Mancuso v. Taft, supra, a First Circuit Court of Appeals case of 1972 which upheld the decision of the District Court, supra, declaring a Rhode Island City home rule charter, which prohibited a policeman from "continuing in the classified service of the City after becoming a candidate for nomination or election to any public office," to be unconstitutional. Both cases, as, it is again reiterated, do all others dealing with this question, strongly state the rule that such statutes must be narrowly drawn. But both decisions went even further than simply stating this and relying only on the void for vagueness rule.

The District Court in Mancuso stated that "a regulation is invalid when there are 'less drastic means' by which a statute restricting First Amendment Rights could achieve its goal (341 F. Supp. 579)." The Court further stated that this rule applied whether or not public employment was referred to as a privilege or a right (p. 579), thus rejecting as do most cases on this point today, this semantical distinction found in United Public Workers v. Mitchell, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754 (1947). Quoting from the Supreme Court case of Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L. Ed2d 534 (1971), a case concerned with an equal protection

argument, the Court said:

" . . . this Court has now rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.' "

The Court then went on to analyze the Rhode Island statute, which in its prohibition, is very similar to the Plattsburgh statute now in question. Applying the "less drastic alternative" test, the Court concluded:

"The evils sought to be prevented could be expunged by narrower rules, for instance, by conflict-of-interest rules, or by the requirement that resignation from employment must follow election to office, or by leaves-of-absences from employment while campaigning.

What was said in Mancuso about "less drastic alternatives" can likewise be said in our case. No such procedures are provided for by the Plattsburgh statute.

The Court of Appeals in Mancuso pointed out that the Rhode Island statute (as does the Plattsburgh statute) prohibits running for any office--even outside the locality enacting the statute (p. 200).

Concluding that while there may be a "compelling interest" by a city in the performance of its employees, the Court said that "constitutional rights exclusions must be well-tailored to effectuate that interest" This is precisely Mr. Perry's contention in our case.

IV.

THE PETITIONER HAS AT ALL RELEVANT TIMES BEEN
DISABLED AND HAS NOT WORKED ONE DAY ON ACTIVE DUTY

Central to all the above-mentioned issues, and yet a separate point itself is the fact that he has not spent one day in uniform nor has he gone to work for one day since January 26, 1973. Nowhere in the Plattsburgh statute is there a definition of what the word "policeman" means. Does it mean a person such as Mr. Perry who cannot work or should its reasonable interpretation be a person who is an active day-to-day member of the police force?

It is our understanding that the rationale behind statutes restricting the political activities of public employees is that certain political activities would destroy the integrity and impartiality sought in public officers. It is said in 28 ALR3d 717 that:

"Doubtless, the purpose of these statutes was not arbitrarily to restrict public employees from engaging in such activities; rather they were the means of attaining the desired result of freeing them from political pressures, and thereby promoting the efficiency and integrity of the civil service."

If so, where is the danger present in our situation where the appellant for all practical purposes has only one job, that of County Legislator?

This even appears to be the opinion of Mr. John Tabner, the distinguished attorney representing the City of Plattsburgh. In an article in the Plattsburgh Press Republican

dated Wednesday, February 6, 1974, the following was printed:

John Tabner, an Albany attorney representing the city, contended that the request for the injunction is 'premature,' because Perry, who injured his back a year ago while assisting on an ambulance call, isn't even on active duty. . .

Only when and if Perry reports back for active duty, said Tabner, can St. Pierre make a decision on whether to fire him, adding that the case is 'moot' until Perry is back on the beat again.

Even from a monetary point of view, the City of Plattsburgh should not be heard to complain. Subdivision 6 of New York's General Municipal Law Section 207 (c) states:

"Notwithstanding any provision of law contrary thereto contained herein or elsewhere, a cause of action shall accrue to the municipality for reimbursement in such sum or sums actually paid as salary or wages and or for medical treatment and hospital care as against any third party against whom the policeman shall have a cause of action for the injury sustained or sickness caused by such third party.

As mentioned in the statement of issue, the City of Plattsburgh has been largely reimbursed under this subrogation statute by New York State's Workmen's Compensation Fund.

The above subrogation statute is very analogous to Section 29 of New York's Workmen's Compensation Law which grants similar subrogation rights to the employer or employer's insurance carrier that an injured employee may have against a third party. Mr. Perry, therefore, is in reality nothing more than a pensioner - simply receiving a monetary benefit for his permanent injury until July 15, 1975.

CONCLUSION

We ask that the judgment of the lower court be reversed and an injunction granted.

At a Term of the United States District Court for the Northern District of New York, held at Chambers in the City of Albany, New York, on the 2nd day of January, 1974.

PRESENT: HONORABLE JAMES J. FOLEY,
United States District Court Judge.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RICHARD PERRY,

Plaintiff,

-against-

ROLAND H. ST. PIERRE, Mayor of the City of Plattsburgh, New York, ROBERT BURKE, Alderman, Ward I, City of Plattsburgh, New York; GARY DAME, Alderman, Ward I, City of Plattsburgh, New York; CARL RENNELL, Alderman, Ward II, City of Plattsburgh, New York; MICHAEL HALEY, Alderman, Ward II, City of Plattsburgh, New York; ROBERT GRIFFIN, Alderman, Ward III, City of Plattsburgh, New York; GEORGE POITRAS, Alderman, Ward III, City of Plattsburgh, New York, aforesaid Aldermen being all of the members of the Common Council of the City of Plattsburgh, New York,

Defendants.

Civil

Action # _____

ORDER TO
SHOW CAUSE

Upon reading and filing the annexed verified complaint and the affidavit annexed hereto, wherefrom it presumptively appears that the plaintiff's civil rights are being threatened and violated in violation of Title 42, Sections 1981, 1982, 1983, 1984 and 1988, of the United States Code, by virtue of certain threatened actions which may be taken by the defendants above named,

NOW, THEREFORE, let the defendants show cause at a Motion term of this Court held in and for the Northern District of New York in the City of Albany at the Federal Building located on Broadway, on the 7th day of January, 1974, at 11:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard why a preliminary injunction should not be granted by this court restraining the defendants above named from taking any action against the plaintiff herein with regard to his political activities, either running for or holding office, with regard to Section 88 of the City Charter of the City of Plattsburgh, New York, ~~or Section 426, subdivision 3, of the Election Law of the State of New York~~, more particularly, from suspending the said plaintiff or impairing his salary or tenure rights, ~~or inaugurating criminal prosecution against him~~ in derogation of his civil rights; and it is further

ORDERED, ADJUDGED AND DECREED that pending determination of this matter that the defendants herein are restrained from taking any action against the plaintiff herein with regard to his political activities, either running for or holding office, with regard to Section 88 of the City Charter of the City of Plattsburgh, New York, ~~or Section 426, subdivision 3, of the Election Law of the State of New York~~, more particularly, from suspending the said plaintiff or impairing his salary or tenure rights, or ~~inaugurating criminal prosecution against him~~ in derogation of his civil rights on the grounds that if the plaintiff were suspended or fired he would suffer irreparable harm by reason of the fact that his salary would cease and/or

his tenure rights would be impaired and/or his rights to retirement benefits would be impaired; and it is further

ORDERED, ADJUDGED AND DECREED that service of a copy of this Order To Show Cause on the defendants by the 4th day of January, 1974, be deemed good and sufficient service.

/s/ James T. Foley
U.S. District Court Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RICHARD PERRY,

Plaintiff,

-against-

ROLAND H. ST. PIERRE, Mayor of the City
of Plattsburgh, New York; ROBERT BURKE,
Alderman, Ward I, City of Plattsburgh,
New York; GARY DAME, Alderman, Ward I,
City of Plattsburgh, New York; CARL RENNELL,
Alderman, Ward II, City of Plattsburgh, New
York; MICHAEL HALEY, Alderman, Ward II, City
of Plattsburgh, New York; ROBERT GRIFFIN,
Alderman, Ward III, City of Plattsburgh, New
York; GEORGE POITRAS, Alderman, Ward III,
City of Plattsburgh, New York, aforesaid
Alderman being all of the members of the
Common Council of the City of Plattsburgh,
New York,

Civil

Action # _____

AFFIDAVIT

Defendants.

STATE OF NEW YORK:

SS:

COUNTY OF CLINTON:

RICHARD PERRY, being duly sworn, deposes and says:

1. I am the plaintiff above named and I make this
affidavit in support of a request for an Order to Show Cause
containing a restraining order and further requesting a
preliminary injunction to enjoin the Mayor of the City of
Plattsburgh, Roland H. St. Pierre, and the members of the
Common Council, the above-named defendants, from taking any
steps which would impair your deponent's rights as a police
officer of the City of Plattsburgh, and more particularly, from
suspending me or in any way impairing my right to obtain my
salary or maintain my tenure rights, by reason of any political

activities which I have engaged in, and more particularly, my seeking and holding office as a County Legislator in the County of Clinton and State of New York.

2. That annexed hereto and made a part hereof is a verified Complaint and the same is incorporated herein as if fully set forth.

3. That your deponent is a registered Democrat and is a member of the newly elected Board of Legislators of the County of Clinton, which has a six-four majority Democrat board. That this is the first time that this has occurred in approximately twenty years and there are at the present time pressures being exerted by the opposition Republican party to remove your deponent from office so that the Board of Legislators would then fall into an even split by reason of the fact that if there was a vacancy created by my absence the Governor of the State of New York, who is a Republican, would fill that vacancy with an additional Republican.

4. That the Common Council of the City of Plattsburgh's political make-up consists of four Republican Aldermen and two Democrat Aldermen and the Mayor having been elected as a Republican candidate for Mayor. With the majority control of the County Board of Legislators go many political appointments which involve large sums of money and, therefore, there are tremendous pressures being created against the plaintiff, your deponent herein, which give the plaintiff rise to believe that his job as a police officer is threatened and that his position

as a County Legislator is threatened. That your deponent has a wife and four children which he is supporting and he has through eighteen and a half years as a police officer only a year and a half more to go in order to obtain retirement benefits which would be then vested. That all of this gives the plaintiff rise to a great concern for his financial security. That if the Common Council of the City of Plattsburgh and/or the Mayor takes steps to enforce the provisions of Section 88 of the City Charter of the City of Plattsburgh prior to the time that a decision is reached in the within case as to the constitutionality of Section 88 of the City Charter, your deponent could be irreparably harmed by reason of his losing his position as a police officer and his retirements benefits. That the Mayor of the City of Plattsburgh has presently referred the question of whether or not your deponent should be retained as a police officer to the Corporation Counsel of the City of Plattsburgh, a member of the firm of Fitzpatrick, Bennett and Trombley, the said John Bennett being a Republican and the partner of Edward Trombley who is the present County Attorney of the County of Clinton, and whose job would be threatened should the Board of Legislators become Democratically controlled as opposed to its present Republican-Democrat split, which is its present configuration. That the Corporation Counsel of the City of Plattsburgh has expressed that the first common council meeting next scheduled when this question is to be decided is Thursday, January 3rd, 1974, and your deponent is concerned that because of the fact that the Corporation Counsel is a partner of the County Attorney that his decision might be adverse to your

deponent's best interest in terms of his keeping his position as a police officer. In addition, the Mayor of the City of Plattsburgh being elected as a Republican and the Common Council also being Republican might have little hesitancy to take action to fire your deponent from his position as a police officer which is as previously been pointed out would cause your deponent irreparable harm.

5. That no previous application for the relief sought herein has been made to any court or judge of the State of New York.

WHEREFORE, your deponent requests that the court grant to him the following relief:

1. Order requiring the defendants to show cause why a preliminary injunction should not be granted pending the determination of the issues in the within action.

2. That a restraining order be granted pending the hearing of the question on the preliminary injunction restraining the defendants from taking any action against the plaintiff by reason of his political activities, and more particularly, from attempting to enforce the City Charter, Section 88, or Section 426 (3) of the Election Law.

3. And for such other, further and different relief as to this Court may seem just and proper.

/s/Richard Perry
Richard Perry

Sworn to before me this 31
day of December, 1973.

/s/Lawrence G. Poissant

Notary Public

O'Connell and Wolfe
66 Margaret Street
Plattsburgh, New York

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RICHARD PERRY,

Plaintiff,

-against-

ROLAND H. ST. PIERRE, Mayor of the City
of Plattsburgh, New York, ROBERT BURKE,
Alderman, Ward I, City of Plattsburgh,
New York; GARY DAME, Alderman, Ward
City of Plattsburgh, New York; CARL RENNELL,
Alderman, Ward II, City of Plattsburgh, New
York; MICHAEL HALEY, Alderman, Ward II, City
of Plattsburgh, New York; ROBERT GIRFFIN,
Alderman, Ward III, City of Plattsburgh, New
York; GEORGE POITRAS, Alderman, Ward III,
City of Plattsburgh, New York, aforesaid
Aldermen being all of the members of the
Common Council of the City of Plattsburgh, New
York,

Civil

Action # _____

ATTORNEY'S
AFFIDAVIT

Defendants.

STATE OF NEW YORK:

SS:

COUNTY OF CLINTON:

LOUISE E. WOLFE, being duly sworn, deposes and says:

1. That being a partner in the firm of O'CONNELL AND WOLFE, ESQS., attorneys for the plaintiff in the within action, hereby certifies to the Honorable James J. Foley, United States District Court Judge, that I have informed the attorney for the City of Plattsburgh, John L. Bennett, Esq., that we are seeking a temporary Restraining Order to restrain the Mayor and the Common Council of the City of Plattsburgh, New York, from taking any action against the plaintiff herein.

2. That the attorney for the City of Plattsburgh has

stated that he could only say that he was not in a position to act one way or the other on the question of Police Officer Perry's status but it was solely a question for the Mayor and the Common Council of the City of Plattsburgh.

/s/ Louis E. Wolfe
Louis E. Wolfe

Sworn to before me this 31st
day of December, 1973.

/s/ Lawrence G. Poissant
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RICHARD PERRY,

Plaintiff,

-against-

ROLAND H. ST. PIERRE, Mayor of the City
of Plattsburgh, New York; ROBERT BURKE,
Alderman, Ward I, City of Plattsburgh,
New York; GARY DAME, Alderman, Ward I,
City of Plattsburgh, New York; CARL RENNELL,
Alderman, Ward II, City of Plattsburgh, New
York; MICHAEL HALEY, Alderman, Ward II, City
of Plattsburgh, New York; ROBERT GRIFFIN,
Alderman, Ward III, City of Plattsburgh, New
York; GEORGE POITRAS, Alderman, Ward III,
City of Plattsburgh, New York, aforesaid
Alderman being all of the members of the
Common Council of the City of Plattsburgh, New
York,

Defendants.

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: Civil
: Action #
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: VERIFIED
: COMPLAINT
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Plaintiff complaining of the defendants by his attorneys,
O'CONNELL AND WOLFE, ESQS., alleges:

1. Jurisdiction of this matter is conferred by Title 42, Sections 1981, 1982, 1983, 1984 and 1988 of the United States Code.
2. Richard Perry is a resident of the City of Plattsburgh, County of Clinton and State of New York, and is a police officer in the City of Plattsburgh Police Force and has been so employed since July 15, 1955, and is forty years of age.
3. That the defendant, Roland H. St. Pierre, is the Mayor of the City of Plattsburgh, a municipal corporation, duly organized and existing under the laws of the State of New York, located in the County of Clinton and State of New York; that the defendants, Robert Burke, Gary Dame, Carl Rennell, Michael Haley, Robert Griffin, and George Poitras are Alderman who live and reside in the City of Plattsburgh, County of Clinton and

State of New York, and comprise all of the members of the Common Council of the City of Plattsburgh, Clinton County, New York, which is the governing body of the City of Plattsburgh, Clinton County, New York.

4. That Roland H. St. Pierre has the power under the City Charter and under the laws of the State of New York to fire police officers employed by the City of Plattsburgh for just cause after due legal procedures have been carried out and further has the power to suspend police officers pay pending determination of questions of fact pertaining to police officers ability to remain as such. The Common Council of the City of Plattsburgh of which the defendant Aldermen named herein are members has the power to overrule the Mayor on questions of retention or firing of police officers.

5. Since January 26, 1973, plaintiff, Richard Perry, has been disabled from performing all of his duties as a police officer by reason of an on-the-job injury which has incapacitated him from performing all of his duties as a police officer. That the plaintiff has not been on active duty but is on the city payroll and is still retained as a police officer because of the fact that the injury sustained was during duty hours.

6. At the City Committee meeting of the Democratic party of the City of Plattsburgh the plaintiff was nominated to run for the position of Area 8 Legislator from the City of Plattsburgh, New York. The said position of Area Legislator's duties are to act as one of the ten members of the Board of Legislators of the County of Clinton, the governing body of the said County of Clinton and State of New York.

7. After conducting a political campaign on November 6, 1973, the plaintiff received a majority of the votes in Area 8,

and this said term of office runs from January 1, 1974.

8. On September 15, 1973, in the presence of the Chief of Police of the City of Plattsburgh, Roland H. St. Pierre, the defendant above named hand-delivered a letter, a copy of which is annexed hereto, and marked Exhibit "A", to the plaintiff herein. That Section 88 of the City Charter of the City of

Plattsburgh reads as follows: "UNLAWFUL CONDUCT AT PRIMARIES. It is unlawful for any police officer to solicit any person to vote at any political caucus, primary or election for any candidates, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary or and any election or to be a member of any political committee; and any person violating the provisions of this section shall forfeit his position under the city government."

Section 88 of the City Charter of the City of Plattsburgh was enacted pursuant to the statutes and ordinances of the State of New York.

9. Section 426, subdivision 3, of the Election Law of the State of New York, reads as follows: "Any person who, being a police commissioner or an officer or member of any police force in this state: 3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for any political fund, or joins or becomes a member of any political club, association, society or committee, is guilty of a misdemeanor."

10. In addition to the Mayor and the Common Council's actions regarding the forewarning of the plaintiff about Charter Section 88, the plaintiff has been advised that by his running for office and being elected to public office he is violating Section 426, subdivision 3, of the Election Law above stated.

11. Both 426, subdivision 3, of the Election Law and Section 88 of the City Charter of the City of Plattsburgh are unconstitutional for the following reasons:

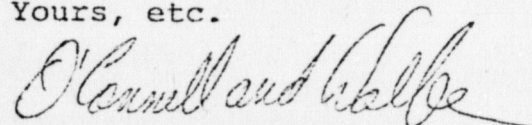
1. They violate the First Amendment of the United States Constitution providing for free speech and association.
2. They violate the equal protection-of-the-law clause of the 14th Amendment of the United States Constitution.

3. They are void because of their vagueness and indefiniteness.

12. Because of the activities of the Mayor of the City of Plattsburgh and because of the activities of the political opponents of the plaintiff herein the plaintiff feels a chilling effect in regard to his ability to perform his duties as a County Legislator and he feels that his job security is threatened with regard to his being a police officer of the City of Plattsburgh and that his retirements benefits could thereby be jeopardized. He fears possible criminal prosecution which would destroy his ability to be a police officer and/or a County Legislator.

WHEREFORE, plaintiff demands judgment declaring Section 88 of the City Charter of the City of Plattsburgh unconstitutional and demands that Section 426, subdivision 3, of the Election Law of the State of New York be declared unconstitutional, and demands judgment that the defendants above named be restrained temporarily and permanently from taking any actions which would either impair the plaintiff's rights to remain as a police officer of the City of Plattsburgh for violation of Section 88 of the City Charter of the City of Plattsburgh or prosecuting the plaintiff pursuant to Section 426, subdivision 3, of the Election Law of the State of New York, or from impairing any of his other rights as a police officer in the City of Plattsburgh, and particularly from suspending his salary or any of his income or tenure benefits, and for such other, further and different relief as to the court may seem just and proper.

Yours, etc.


O'CONNELL AND WOLFE, ESQS.
Attorneys for Plaintiff
Office and P. O. Address
66 Margaret Street
Plattsburgh, New York 12901

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RICHARD PERRY,

Plaintiff,

- against -

ROLAND H. ST. PIERRE, Mayor of the City of
Plattsburgh, New York, ROBERT BURKE, Alderman,
Ward I, City of Plattsburgh, New York; GARY
DAME, Alderman, Ward I, City of Plattsburgh,
New York; CARL RENNELL, Alderman, Ward II, City
of Plattsburgh, New York; MICHAEL HALEY,
Alderman, Ward II, City of Plattsburgh, New York;
ROBERT GRIFFIN, Alderman, Ward III, City of
Plattsburgh, New York; GEORGE POITRAS, Alderman,
Ward III, City of Plattsburgh, New York, aforesaid
Aldermen being all of the members of the Common
Council of the City of Plattsburgh, New York,

VERIFIED
ANSWER

Defendants.

Defendants, answering the Complaint of the
Plaintiff herein, by their attorneys, TABNER, CARLSON,
JUSTICE, DAFFNER and FARRELL, Allege:

1. Deny any knowledge or information sufficient
to constitute a belief as to the allegations contained in the
paragraphs of said Complaint marked and designated "1.", "6.",
"10." and "12."
2. Admit the allegations contained in paragraphs
of said Complaint marked and designated "2.", "3.", "4.", "5.",
"7.", "8.", and "9."
3. Denies the allegations contained in paragraphs
of Plaintiff's Complaint marked and designated "11."

FOR A FIRST SEPARATE AND COMPLETE
DEFENSE, DEFENDANTS ALLEGE:

4. That the action herein seeks to declare
unconstitutional a statute of the State of New York improperly
commenced and maintained before this Court in that the People

of the State of New York have not been joined as a party thereto and the Court therefore does not have jurisdiction of this action.

FOR A SECOND SEPARATE AND COMPLETE
DEFENSE, DEFENDANTS ALLEGE:

5. That this action is not within the jurisdiction of the United States District Court for the Northern District of New York in that it involves a matter of interpretation of law and Statutes which are not within the jurisdiction conferred by the Laws of the United States of America.

FOR A THIRD SEPARATE AND COMPLETE
DEFENSE, DEFENDANTS ALLEGE:

6. That the actions taken by the Defendants herein as set forth, alleged and complained of, by the Plaintiff in his Complaint were lawful and valid actions under the Laws of the State of New York, United States of America and the City Charter of the City of Plattsburgh, New York, and the actions taken by the defendants were mandated by the statutes of the State of New York in such case made and provided.

WHEREFORE, Defendants demand judgment dismissing the Complaint of the Plaintiff herein and such other and further relief as to the Court may seem just and proper.

YOURS, ETC.

S/ John W. Tabner

John W. Tabner, one of

TABNER, CARLSON, JUSTICE,
DAFFNER and FARRELL
Attorneys for Defendants
Office and Post Office Address
90 State Street
Albany, New York 12207
(518) 436-7643

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RICHARD PERRY,

Plaintiff,

-against-

ROLAND H. ST. PIERRE, Mayor of the City of
Plattsburgh, New York; ROBERT BURKE, Alderman,
Ward I, City of Plattsburgh, New York; GARY
DAME, Alderman, Ward I, City of Plattsburgh,
New York; CARL RENNELL, Alderman, Ward II,
City of Plattsburgh, New York; MICHAEL HALEY,
Alderman, Ward II, City of Plattsburgh, New
York; ROBERT GRIFFIN, Alderman, Ward III,
City of Plattsburgh, New York; GEORGE POITRAS,
Alderman, Ward III, City of Plattsburgh, New
York, aforesaid Alderman being all of the
members of the Common Council of the City of
Plattsburgh, New York,

Civil
Action #

74-CV-1

AFFIDAVIT

Defendants.

STATE OF NEW YORK:

SS:

COUNTY OF CLINTON:

ROLAND H. ST. PIERRE, being duly sworn, deposes and says:

1. I am one of the defendants above named and I make
this affidavit in support of the answer filed in the above matter
with the court on the 21st day of January, 1974, and in opposition
to plaintiffs motion for a temporary injunction.

2. That your deponent is the duly elected Mayor of
the City of Plattsburgh, New York, duly charged with executing
the responsibilities of that office.

3. That Section 88 of the City Charter of the City of
Plattsburgh restricts the activities of the members of its

police force in such a way that members of the police force are barred from directly participating in certain political activities and include becoming a candidate for and a political party's nominee for public office.

4. That the plaintiff in the above captioned matter, RICHARD PERRY, was a member of the police force of the City of Plattsburgh, New York, and continues to be a full paid member of such force; on disability leave, receiving full pay.

5. That because of the activity of the above mentioned plaintiff in campaigning for public office for a seat on the Clinton County Board of Legislature in the General Election of 1973, a letter was personally delivered to the plaintiff on the 15th day of September, 1973, notifying him of an apparent violation of the above mentioned Section of the City Charter.

6. That an action was commenced in the United States District Court for the Northern District of New York to restrain your deponent and the members of the Common Council from taking any action which would impair the constitutional rights of the plaintiff, RICHARD PERRY.

7. That your deponent has at all times acted to the best of his knowledge and ability within the purview and mandate of the laws of the City of Plattsburgh, the statutes of the State of New York and the Constitution of the United States.

8. That at no time was there any or is there now any partisan consideration or motivation which directs your deponent to any action in the matter of the plaintiff, RICHARD PERRY.

9. That your deponent has been a life-long member of the Democratic Party, was enrolled as a member of the Republican Party during the years 1971 and 1972, and has subsequently been and is now an enrolled member of the Democratic Party.

10. That the retention of the plaintiff on the police force of the City of Plattsburgh and extension of the temporary restraining order will leave open the question of the validity of the officers actions in participating in a political activity, it will leave an area of doubt for enforcement of police discipline, which may prejudice the action of the City Council and will possibly cause other police officers to violate the existing statutes and laws. In the interest of the orderly enforcement of existing laws and statutes the temporary restraining order should not become a temporary injunction pending termination of this case. Plaintiff has failed to show any irreparable harm and to utilize the drastic remedy of a temporary injunction would not seem justified in this action.

WHEREFORE, your deponent requests the court to dismiss the complaint in this action and thereby affirm that your deponent has acted in conformity with the requirements of the Laws of the City of Plattsburgh, the statutes of the State of New York and the Constitution of the United States; and for a further determination that the Laws of the City of Plattsburgh do not impede the

constitutional rights of the plaintiff, RICHARD PERRY, and that
Section 426 (3) of the New York State Election Law is constitutional
and of binding effect upon the members of the City of Plattsburgh
Police Force.

s/Roland H. St. Pierre
ROLAND H. ST. PIERRE

Sworn to before me this
29th day of January, 1974.

s/Aline G. Cote
Notary Public

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RICHARD PERRY,

Plaintiff,

-against-

74-CV-1

ROLAND H. ST. PIERRE, Mayor of the City of Plattsburgh, New York; ROBERT BURKE, Alderman, Ward I, City of Plattsburgh, New York; GARY DAME, Alderman, Ward I, City of Plattsburgh, New York; CARL RENNELL, Alderman, Ward II, City of Plattsburgh, New York; MICHAEL HALEY, Alderman, Ward II, City of Plattsburgh, New York; ROBERT GRIFFIN, Alderman, Ward III, City of Plattsburgh, New York; GEORGE POITRAS, Alderman, Ward III, City of Plattsburgh, New York, aforesaid Alderman being all of the members of the Common Council of the City of Plattsburgh, New York,

74-8322

Defendants.

APPEARANCES:

OF COUNSEL:

O'CONNELL and Wolfe
Attorneys for Plaintiff
66 Margaret Street
Plattsburgh, New York 12901

J. BYRON O'CONNELL

TABNER, CARLSON, JUSTICE,
DAFFNER and FARRELL
Attorneys for Defendants
National Savings Bank Building
Albany, New York 12207

JOHN W. TABNER
THOMAS J. SPARGO

HARVEY and HARVEY, P. C.
Attorneys for Police Conference
of New York, Inc.
Amicus Curiae
Twenty-Nine Elk Street
Albany, New York 12207

ARTHUR J. HARVEY

JAMES T. FOLEY, D. J.

Plaintiff has been a police officer in the City of Plattsburgh, New York, for eighteen and one-half years, having only one and one-half years remaining for entitlement to his retirement benefits. As stated in his complaint (para. 7) and repeated in his memorandum of law (pp. 2-3) "[a]fter conducting a political campaign on November 6, 1973, the plaintiff received a majority of votes in Area 8, and his term of office runs from January 1, 1974." The result of this election was that plaintiff, being a police officer throughout

this period, was elected as an Area Legislator from the City of Plattsburgh to the ten member Board of Legislators, County of Clinton (the governing body of Clinton County, New York).

On September 14, 1973, after the plaintiff was an announced candidate, Roland H. St. Pierre, Mayor of the City of Plattsburgh, wrote a letter to plaintiff, informing him that it was the opinion of the Corporation Counsel of the City of Plattsburgh that plaintiff's candidacy and campaign efforts that would follow may constitute a violation of the Charter of the City of Plattsburgh, § 88, and could result in the forfeiture of employment of plaintiff as a member of the Plattsburgh Police Department.

§ 88 provides:

Plattsburgh Charter

It is unlawful for any police officer to solicit any person to vote at any political caucus, primary or election for any candidates, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary, or and* any election or to be a member of any political committee; and any person violating the provisions of this section shall forfeit his position under the city government.

*So in original.

Interpreting this letter as a threat to his constitutional rights, plaintiff, through his counsel, applied to me on January 2, 1974, for an order to show cause seeking a temporary restraining order and preliminary injunction against any action that might be taken by defendants under § 88. I signed the order and made it returnable January 7, 1974, in Albany; there was extended briefing and final submission on March 7, 1974. Plaintiff alleged jurisdiction in his complaint under 42 U.S.C. § 1983, omitting to mention its necessary counterpart 28 U.S.C. § 1343. With telephone consent of the Corporation Counsel of Plattsburgh, a temporary restraining order issued and has continued thereafter by stipulation of the parties until this determination on the motion for a preliminary injunction. There has been a significant development in this

period, namely, the decision of the Court of Appeals, Second Circuit, in *Lecci v. Cahn*, _____ F. 2d _____, DK. No. 73-2087, Slip. Op. 1961 (2d Cir. Feb. 25, 1974). This appeal was from a District Court decision rendered by Judge Zavatt which was greatly relied upon as support for the plaintiff's position herein. *Lecci v. Cahn*, 360 F. Supp. 759 (E.D. N.Y. 1973). The Court of Appeals, while vacating the district court judgment for a justiciable controversy and lack of federal jurisdiction, made significant remarks in my judgment regarding the generic issue before me, the constitutional propriety of regulation of political activities by police. *Lecci* was a member of the Nassau County Police Department and sought a declaration that N.Y. Election Law, §426 (3), making it a misdemeanor for certain political activity was unconstitutional. In regard to statutes of this type, plaintiff's allegation herein that the City Charter provision previously set forth had a "chilling effect" (complaint para. 12) was specifically addressed in Lecci and given definite answer:

The chilling effect standing***does not survive where the statute challenged for overbreadth regulates conduct rather than speech which is clearly the thrust of the statute here attached.

Lecci v. Cahn, supra, Slip Op. at 1966; compare *Dombrowski v. Pfister*, 380 U.S. 479, 491-92 (1965).

Plaintiff's three remaining challenges are that the statute (1) unconstitutionally regulates First & Fourteenth Amendment rights protecting free speech, association and political activities and is void on its face; (2) denies equal protection because only police and not other municipal employees are subject to §88 and (3) that it is vague and indefinite.

In my judgment, these challenges are answered forcefully by the United States Supreme Court in the recent cases of *United States Civil Ser. Com. v. Nat. Ass'n of Letter Carriers*, 413 U.S. 548 (1973) and *Broadrick v. Oklahoma*, 413 U.S. 601 (1973), in which the Supreme Court also "unhesitatingly" reaffirmed *United Public Workers v. Mitchell*, 330 U.S. 75 (1945). These cases leave no

doubt in my mind that both federal and state laws may impose reasonable limitations on the political activities of their employees. Letter Carriers, supra, 413 U.S. at 563-567; Broadrick v. Oklahoma, supra, 413 U.S. 603-05. And plaintiff's complaint that other governmental employees are not proscribed from certain activities by § 88 was viewed by the Court as a blessing rather than a constitutional defect because:

a state can hardly be faulted for attempting to limit the positions upon which such restrictions are placed.

Broadrick v. Oklahoma, supra, 413 U.S. at 607 n. 5.

The last challenge of vagueness and indefiniteness presents a more difficult analysis because every statute is unique to some extent and the wording of § 88 of course is not identical with those federal and State statutes expressly approved by the Supreme Court. Notwithstanding this obvious difference that must be noted in respect to the case at bar, I believe that the broad latitude given to Congress and the States in this area of limiting political activity for certain type employees mandates approval of the language of § 88. The Supreme Court said that a statute may validly forbid classified employees from engaging in a list of very specific activities. In my judgment, the list given by this Court of activities that may be controlled encompasses the plain wording of this Section of the Plattsburgh Charter herein challenged. See Broadrick v. Oklahoma, supra, 413 U.S. at 616-617. Moreover, since it is stated in the complaint that plaintiff did conduct a campaign (complaint para. 7), it must be accepted as self-evident that the activities specified as unlawful in the Charter, § 88, must have been undertaken by the plaintiff. Broadrick v. Oklahoma, supra, 413 U.S. at 607-610. Thus, in terms of plaintiff's admitted conduct, the statute in my judgment cannot be considered vague or

indefinite when its terminology itemized particular acts that are part and parcel of political endorsement and campaigns for public office.

Based upon my analysis of these cases, I find there is little likelihood of any success on the merits of plaintiff's case. Legislative acts are presumed valid and will be so found unless it is shown the statute bears no rational relationship to a legitimate legislative purpose and objective. *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955); see also *Richardson v. Belcher*, 404 U.S. 78, 81 (1971). Frankly, it would be difficult to appraise this Charter provision as being outside constitutional bounds in the light of settled case law. However, at this stage, and although this ruling does in effect cover the merits inasmuch as there is no factual dispute and not much more discernible that could be presented at hearing or trial, the important factor of likelihood of success being absent, I am compelled to and do hereby dissolve and vacate the temporary restraining order and the motion for a preliminary injunction is denied and dismissed. *Gulf & Western Indus., Inc., v. Great A & P Tea Co., Inc.*, 476 F. 2d 687, 692-93 (2d Cir. 1973); *Dopp v. Franklin National Bank*, 461 F.2d 873, 878 (2d Cir. 1972); *Checker Motors Corp. v. Chrysler Corp.*, 405 F. 2d 319, 323 (2d Cir. 1969); *Societe Comptoir De L'Indus. v. Alexander's Dept. Stores, Inc.*, 299 F. 2d 33, 35 (2d Cir. 1962).

The facts of this case are not in dispute and plaintiff having conceded he actively campaigned for the county legislature, this decision may foreclose the need for any further proceedings to adjudge the issues on the merits. The formalities of ordering consolidation were not followed but, in my judgment, practically speaking, the merits are decided. F.R. Civ. Pro. 65 (a) (2). Appeal from this decision to the Court of Appeals, Second Circuit, should plaintiff be so advised, may be the best course to challenge effectively its reasoning and conclusion. See *Wright & Miller, Fed. Prac. & Pro. Civ.*: § 2962; 28 U.S.C. 1292(a) (1). If stipulations or certifications

are necessary to insure the right to appeal, my assistance will be freely given.

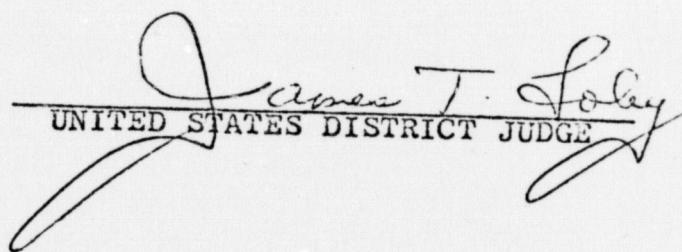
Lastly, lack of likelihood of success on the merits is the dominant factor for the ruling herein. I do not rule on the irreparable injury or the balance of equities between the parties except to say that neither of these factors in my judgment is significant enough under the facts of this case to alter this decision to such extent as to favor and warrant the relief the plaintiff seeks. But see, *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F. 2d 1197, 1204-06 (2d Cir. 1970).

As stated, the temporary restraining order is vacated and the motion for a preliminary injunction is denied and the order to show cause dismissed.

It is so Ordered.

Dated: March 15, 1974

Albany, New York


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

March 28, 1974

RICHARD PERRY,

Plaintiff,

- against -

ROLAND H. ST. PIERRE, Mayor of the City of Plattsburgh, New York; ROBERT BURKE, Alderman, Ward I, City of Plattsburgh, New York; GARY DAME, Alderman, Ward I, City of Plattsburgh, New York; CARL RENNELL, Alderman, Ward II, City of Plattsburgh, New York; MICHAEL HALEY, Alderman, Ward II, City of Plattsburgh, New York; ROBERT GRIFFIN, Alderman, Ward III, City of Plattsburgh, New York; GEORGE POITRAS, Alderman, Ward III, City of Plattsburgh, New York, aforesaid Alderman being all of the members of the Common Council of the City of Plattsburgh, New York,

NOTICE OF APPEAL

Defendants.

74-CV-1

NOTICE IS HEREBY GIVEN that Richard Perry, the plaintiff above named, hereby appeals to the United States Court of Appeals, for the Second Circuit from the Order vacating the Temporary Restraining Order and denying the motion for Preliminary Injunction and dismissing the Order to Show Cause entered in this action on the 15th day of March 1974.

Yours, etc.,

O'Connell & Wolfe
O'CONNELL AND WOLFE

By: *J. Byron O'Connell* of counsel
Attorneys for Plaintiff
Office and P.O. Address
66 Margaret Street
Plattsburgh, New York 12901
Tel. No. 518-561-1440

(No. 8 10-15-74)

74-2348

B46

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fifteenth day of October, one thousand nine hundred and seventy-four.

Richard Perry,

Plaintiff-Appellant,

v.

Roland H. St. Pierre, Mayor of the City
of Plattsburgh, New York; et. al.,

Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the appellant by notice of motion dated September 27, 1974, for a stay pending determination of the appeal and to fix the amount of the bond required to be filed by the appellant in the amount of TWO HUNDRED AND FIFTY Dollars (\$250.00) be and it hereby is granted.

A. DANIEL FUSARO
Clerk

By Edward J. Guardaro
Senior Deputy Clerk

BEFORE: HON. JOHN A. DANANER
HON. WILFRED FEINBERG
HON. WILLIAM H. MULLIGAN
Circuit Judges



(No. 9 10-15-74)

74-8322

B52

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fifteenth day of October, one thousand nine hundred and seventy-four.

Richard Perry,

Plaintiff-Appellant,

v.

Roland H. St. Pierre, Mayor of the City of
Plattsburgh, New York; et. al.,

Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the appellant by notice of motion dated September 27, 1974, for leave to docket the appeal and file the record be and it hereby is granted.

It is further ordered that the appellant shall file a brief and joint appendix on or before November 12, 1974, in default of which the Clerk shall enter an order dismissing the appeal; and that the Federal Rules of Appellate Procedure shall be applicable thereafter.

It is further ordered that all parties shall file at least seven copies of their papers which may be in typewritten form.

A. DANIEL FUSARO
Clerk

By Edward J. Guardaro
Senior Deputy Clerk

BEFORE: HON. JOHN A. DANANER
HON. WILFRED FEINBERG
HON. WILLIAM H. MULLIGAN

Circuit Judges



Office of the Mayor

City Hall
Plattsburgh, New York
12901

Rev. Roland H. St. Pierre, O.A.F.
Mayor

Telephone 563-2170
(Area Code 518)

September 14, 1973

Richard Perry
209 South Catherine Street
Plattsburgh, New York

Dear Mr. Perry:

Since you are both a member of the Plattsburgh Police Department and a candidate for the office of County Legislator in ward one in the City of Plattsburgh, I wish to advise you of the provisions of Section 88 of the City Charter of the City of Plattsburgh. Section 88 provides as follows:

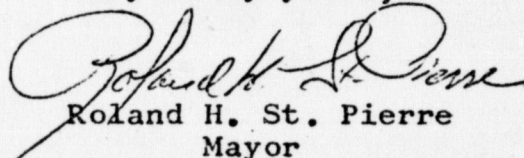
It is unlawful for any police officer to solicit any person to vote at any political caucus, primary or election for any candidates, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary, or and* any election or to be a member of any political committee; and any person violating the provisions of this section shall forfeit his position under the city government.

*So in original.

It is the opinion of the corporation counsel of the City of Plattsburgh that your candidacy may constitute a violation of Section 88 of the Charter which could result in the forfeiture of your employment as a member of the Plattsburgh Police Department.

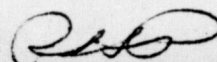
It is my understanding that the validity of a similar statute is now pending in the courts. It is not my intention to act in this matter until a final judicial determination has been reached.

Very truly yours,


Roland H. St. Pierre
Mayor

RHS/mm

Delivered 9/15/73 in the presence
of Chief of Police



A29



Office of the Mayor

City Hall
Plattsburgh, New York
12901

Telephone 533-2170

(Area Code 518)

Rev. Roland H. St. Pierre, O.M.I.
Mayor

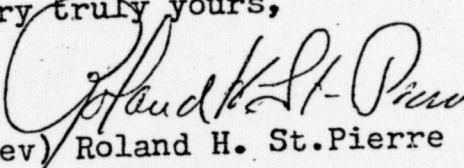
March 22, 1974

Mr. Richard Perry
209 So. Catherine St.
Plattsburgh, N.Y. 12901

Dear Mr. Perry:

Since decision has been rendered by Judge Foley, I must, as Mayor of the City of Plattsburgh, enforce the City Charter, Section 88 to notify you, you have forfeited your position as Police Patrolman effective March 22, 1974.

Very truly yours,


(Rev) Roland H. St. Pierre
Mayor



PLATTSBURGH STATUTE IN QUESTION AND
NEW YORK ELECTION LAW STATUTE DECLARED UNCONSTITUTIONAL

1. Plattsburgh City Charter, Section 88:

It is unlawful for any police officer to solicit any person to vote at any political caucus, primary or election for any candidates, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary, or and* any election or to be a member of any political committee; and any person violating the provisions of this section shall forfeit his position under the city government.

*So in original.

2. "Section 426. Misdemeanors concerning police commissioners or officers or members of any police force

Any person who, being a police commissioner or an officer or member of any police force in this state:

* * *

3. Contributes any money, directly or indirectly, to, or solicits, collects or receives any money for, any political fund, or joins or becomes a member of any political club, association, society or committee,

Is guilty of a misdemeanor."

UNITED STATES COURT OF APPEALS

Second Circuit

RICHARD PERRY,

Plaintiff,

-against-

ROLAND H. ST. PIERRE, Mayor of the City
of Plattsburgh, New York, ROBERT BURKE,
Alderman, Ward I, City of Plattsburgh,
New York; GARY DAME, Alderman, Ward I,
City of Plattsburgh, New York; CARL RENNELL,
Alderman, Ward II, City of Plattsburgh, New
York; MICHAEL HALEY, Alderman, Ward II, City
of Plattsburgh, New York; ROBERT GRIFFIN,
Alderman, Ward III, City of Plattsburgh, New
York; GEORGE POITRAS, Alderman, Ward III,
City of Plattsburgh, New York, aforesaid
Aldermen being all of the members of the
Common Council of the City of Plattsburgh,
New York,

Defendants.

AFFIDAVIT

OF

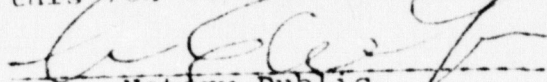
SERVICE

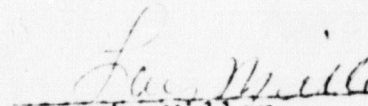
STATE OF NEW YORK:
SS:
COUNTY OF CLINTON:

LOIS MILLER, being duly sworn deposes and says:

1. That I am not a party to the above action and I am over 18 years of age and reside in Plattsburgh, New York.
2. That on the 7th day of November, 1974, I served the within Appellant's Brief and Appendix upon John W. Tabner, Esquire, of Tabner, Carlson, Daffner and Farrell, at the National Savings Bank Building, Albany, New York 12207; and John J. Bennett, Esquire, of Fitzpatrick, Bennett & Trembley, 48 Court Street, Plattsburgh, New York; attorneys for Defendants in this action, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me
this 7th day of November, 1974.


Notary Public


Lois Miller

LOUIS E. WOLFE
Notary Public in the State of New York
Residing in the County of Clinton
My Commission Expires March 30, 1976

O'Connell and Wolfe
66 Margaret Street
Plattsburgh, New York

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated: _____

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows; that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: _____

STATE OF NEW YORK, COUNTY OF

SS.: _____

INDIVIDUAL VERIFICATION

deponent is

the

, being duly sworn, deposes and says that in the within action; that deponent has

read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF _____

SS.: _____

CORPORATE VERIFICATION

_____, being duly sworn, deposes and says that deponent is the _____ of _____ the corporation named in the within action; that deponent has _____ read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because _____ is a _____ corporation. Deponent is an officer thereof, to-wit, its _____ The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this _____ day of _____ 19 _____

STATE OF NEW YORK, COUNTY OF _____

SS.: _____

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at _____

That on the _____ day of _____ 19 _____ deponent served the within _____ attorney(s) for upon _____ in this action, at _____

_____ the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this _____ day of _____ 19 _____

Index No.

Year 19

STATE OF NEW YORK

UNITED STATES

COURT OF APPEALS

COUNTY OF
XXXXXX

RICHARD PERRY,

Plaintiff,

-against-

ROLAND H. ST. PIERRE, Mayor of the City of Plattsburgh, New York, et. al.

APPELLANT'S BRIEF AND APPENDIX

To

Attorney(s) for

Service of a copy of the within

Dated,

is hereby admitted.

Attorney(s) for

Sir:—Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of a clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the HON.

one of the judges of the within named Court,

at

on the

day of

19

at

M.

Dated,

Yours, etc.

O'Connell and Wolfe

Attorneys for

Office and Post Office Address

55 Margaret Street

Plattsburgh, New York 12901

561-1440

To

Attorney(s) for